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Docket No.: KCC-15,171

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Amy L. FLETCHER, et al.

Serial No.: 09/784,292

Filing Date: 15 February 2001

Title: GARMENT HAVING REMOVABLE SIDE
PANELS

Confirmation No. 2228

Customer No. 35844

Group No.: 3761

Examiner: K. Reichle

APPELLANTS' REPLY BRIEF UNDER 37 CFR 41.41

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Dear Sir:

Appellants herewith file their Reply Brief in the above-identified case, in response to the Examiner's Answer mailed 19 May 2005. Appellants respectfully submit that the Examiner's assertions are incorrect as a matter of law and fact. Thus, for the reasons set forth below, Appellants respectfully request that this Board reverse the rejections of Claims 1-40 under 35 U.S.C. §103(a).

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In the Examiner's Answer, the Examiner reiterated the rejections under 35 U.S.C. §103(a) presented in the final Office Action mailed 30 April 2004, and then presented a response to Appellants' first argument. Appellants reply to the Examiner's response as follows:

1. KUEN '162, KEUHN, JR., AND SAUER FAIL TO DISCLOSE OR SUGGEST SIDE PANELS HAVING A WAIST EDGE THAT IS NON-PARALLEL WITH A LEG EDGE.

Without wishing to be limited, it is believed that absorbent garments that include the aspects of the presently claimed invention advantageously conform about a wearer's legs, which results in improved fit and appearance.

With respect to Appellants' remarks regarding the failure of *Kuen '162* to disclose or suggest side panels having a waist edge that is non-parallel with a leg edge, the Examiner opines that Appellants' remarks are not commensurate in scope with the teachings of *Kuen '162* at col. 5, lines 59-63. The sentence in *Kuen '162* at col. 5, lines 59-63, cited by the Examiner is:

The pleated material may be rectangular in shape, with a width of from about 0.5 to about 3 inches (ca. 1.27-7.62 cm.) and an overall length of from about 4 to about 18 inches (ca. 10.16-45.72 cm.), although other shapes are also possible.

Because this sentence specifically describes a rectangular shape while failing to specifically list any other individual shapes, and, further, because the figures in *Kuen '162* illustrate rectangular strap members 40, Appellants maintain their position that the most logical shape of the pleated region 50 in *Kuen '162* is rectangular.

The Examiner further points out that "claim 1 does not require the waist edge be nonparallel along its entire extent to the leg edge along its entire extent, i.e. as claimed the side panels could also have rectangular portions." Appellants do not disagree with the Examiner's observation, but maintain that *Kuen '162* still fails to disclose or suggest side panels having a waist edge that is non-parallel with a leg edge, even if a portion of the side panels are rectangular.

Although Claim 1 does not require a curved leg end edge nor any specific dimensions of the side panels, Appellants provided a comparison of the detailed descriptions of Appellants' side panels versus the *Kuen '162* strap members in the Appeal

Brief to show the sharply contrasting designs and incongruous motivations leading to the claimed non-parallel waist and leg edges in Appellants' side panels and the lack of any suggestion of non-parallel waist and leg edges in the *Kuen '162* strap members.

Although Claim 1 does not require any *specific* portion of each edge be non-parallel to any other *specific* portion of the other edge, Appellants provided observations in the Appeal Brief noting the parallel leg and waist edges along refastenable portions of the strap members in the cited references and the occurrence of non-parallel leg and waist edges *only* in the *non*-refastenable areas of the cited references.

Appellants, being skilled in the art, explained in the Appeal Brief that the benefit of non-parallel strap member edges in the cited references is apparent *only* in the permanently connected area. More particularly, the permanently connected area benefits from a larger bond area or surface area connection for a stronger, more permanent connection between the strap member and the back waist member, whereas a less permanent, releasable connection between the strap member and front waist region is suitably provided by a strap member having parallel waist and leg edges, as illustrated in *Keuhn, Jr.* and *Sauer*. Thus, neither *Keuhn, Jr.*, nor *Sauer* provide any suggestion or motivation for the waist and leg edges of the strap members to be non-parallel when *both* ends of the strap members are releasably attached to the chassis.

The Examiner refers to the "interchangeability" taught by *Kuen*, *Keuhn, Jr.*, and *Sauer*. *Keuhn, Jr.*, and *Sauer* disclose interchangeability between strap members that are releasably attached to a chassis at both ends of the strap members, and strap members that are permanently attached to a chassis at one end of the strap members and releasably attached to the chassis at the other end of the strap members. However, it is clear from both of these references that the waist and leg edges of the strap members are only non-parallel when one end of the strap member is permanently attached to the chassis, and the waist and leg edges of the strap members are parallel when both ends of the strap members are releasably attached to the chassis. Thus, *Kuen*, *Keuhn, Jr.*, and *Sauer* fail to disclose or suggest any interchangeability between parallel and non-parallel waist and leg edges of strap members when both ends of the strap members are releasably connected to the chassis.

Appellants maintain that a *prima facie* case of obviousness has not been established because the cited references fail to provide any suggestion or motivation to

modify the references or to combine reference teachings to achieve a garment having side panels releasably connected to front and back panels wherein the side panels each have a waist edge that is non-parallel with a leg edge when the side panels are in a laid flat configuration. Furthermore, none of the cited references, alone or in combination, absent impermissible hindsight, disclose or suggest all of the limitations of Claim 1.

2. KUEN '162, KEUHN, JR., AND SAUER FAIL TO DISCLOSE OR SUGGEST SIDE PANELS THAT COMPRISE A WIPE MATERIAL.

Appellants maintain that the term "wipe material" is a term of art that is understood by those skilled in the art to refer to an article that is used for wiping a wearer's skin during the changing of a soiled absorbent garment. Thus, the Examiner's interpretation of the limitations of Claims 5 and 38 is overly broad. Furthermore, neither *Kuen '162*, nor *Keuhn, Jr.*, nor *Sauer* discloses or suggests the incorporation of wipe material into the side panels of an absorbent garment.

3. APPELLANTS MAINTAIN THEIR POSITION IN ARGUMENTS II-V IN THE APPEAL BRIEF.

The Examiner has indicated that she maintains the grounds of rejection 2)-5). Likewise, Appellants maintain their position in arguments II-V in the Appeal Brief.

CONCLUSION

For the reasons presented above, Appellants respectfully submit that the Examiner's Answer does not overcome Appellants' Appeal Brief. Therefore, Appellants respectfully request that the Board reverse the rejections proposed by the Patent Office.

Respectfully submitted,



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